

- (1) Did the Administrative Law Judge err in awarding \$1,250 in attorney's fees and \$832.41 in expenses to claimant's initial counsel, Pistotnik Law Offices?
- (2) Did the Administrative Law Judge err in assessing against the claimant the cost of the transcript on the hearing relating to attorney's fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes the two Orders entered by the Administrative Law Judge, one relating to attorney's fees and the second relating to the transcript cost of the hearing on the attorney's fees issue, should be affirmed.

Claimant initially entered into an agreement with and obtained the services of the law firm of Pistotnik, P.A., in November 1993. The agreement called for the Pistotnik law firm to handle claimant's workers compensation claim in exchange for 25 percent of the amounts recovered. The agreement further provided that in the event claimant terminated the agreement after counsel had begun work, the counsel was to have a lien on claimant's recovery for time expended at counsel's normal hourly rate. After the Pistotnik firm had obtained an independent medical examination and had obtained an offer for settlement, claimant terminated the firm's services and retained new counsel, John D. Shultz. Claimant's workers compensation claim was then resolved and settled for an amount greater than the initial offer. The settlement included the settlement of claims for unemployment compensation, wrongful discharge, and discrimination. These were for claims which for the most part arose after claimant terminated the services at the Pistotnik law firm. The Pistotnik law firm filed a lien against the settlement in the amount of \$7,571.98. The amount of the lien was based upon the amount of the settlement offered prior to the termination of the services. The amount of the lien included 25 percent for the first \$10,000 and a reduced percentage for each \$10,000 thereafter as provided by statute. It also included expenses incurred. Claimant objected to the amount of the lien and a hearing was held March 12, 1996, to consider the claim for attorney's fees and expenses. At the hearing, claimant's current counsel argued that the agreement between claimant and his initial law firm called for a contingency fee and attorney's fees to be paid only in the event of recovery. Claimant's current counsel argues that the previous counsel is, therefore, entitled to nothing. In the alternative, claimant's current counsel argues that the fee should be based upon a quantum merit. Since claimant's previous counsel presented no evidence as to the number of hours spent, they are not, according to claimant's current counsel, entitled to recovery. The Administrative Law Judge reviewed the testimony of the claimant regarding the handling of this claim and the documents filed in this case. The record includes an application for hearing filed by claimant's previous counsel, evidence that claimant's previous counsel arranged for an independent medical examination, and evidence that claimant's previous counsel had obtained a settlement offer prior to the discharge in this case. The record also includes that claimant's current counsel participated in at least two meetings between claimant and his previous counsel and a number of phone conversations.

From the record presented, the Administrative Law Judge concluded that claimant's previous counsel would have expended approximately 10 hours and he placed the fee at \$125 per hour, for a total of \$1,250 in attorney's fees, plus \$832.41 in out-of-pocket

expenses as reflected in the documentation submitted. The Appeals Board agrees this is a reasonable assessment of fees and expenses in this case. A vastly preferable procedure would include the submission of time records reflecting the time spent. Ten hours does, however, represent a reasonable reconstruction of the time shown by the record. The Appeals Board also agrees that counsel should be limited to the hourly rate in accordance with the terms of the agreement between the parties. K.S.A. 44-536 includes factors to be considered in determining reasonableness of attorney's fees. They include whether offers were made, time and labor required, and a list of other factors. Taking these factors into consideration, the Appeals Board finds the Award to be reasonable and appropriate in this case.

The Appeals Board also finds it reasonable, under the circumstances, to award the costs of the transcript proceedings held on March 12, 1996, to be assessed against the claimant. Assessment of court reporting fees is covered in workers compensation cases by K.S.A. 44-555. That statute authorized the administrative law judge to assess costs and reporter's fees to any party of the proceeding. The hearing in this case was initiated at the request of claimant's current counsel. The Appeals Board affirms the assessment of those costs as stated in the original Order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Jon L. Frobish on March 18, 1996, and the Order entered May 6, 1996, should be, and the same are hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
John D. Shultz, Dodge City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director